

Item 16, Supporting Document 17

Compliance through Prompt, Fair & Consistent Formal Enforcement (Mark Alpert)

Introduction

In 1998 the Regional Board Enforcement Coordinator position was created to improve the San Diego Regional Board's effectiveness and efficiency in enforcing water quality laws and policies. At that time, the San Diego Regional Board also created a stand-alone enforcement unit dedicated to improving discharger compliance through formal enforcement actions (formal enforcement actions include: Cleanup and Abatement Orders, Cease and Desist Orders, and Assessment of Administrative Civil Liability). Significant progress has been made in the ensuing years. Enforcement activities have dramatically increased and more importantly the Region has achieved marked improvements toward its goal of improving discharger compliance with Waste Discharge Requirements, environmental laws, and the greater mission of protecting water quality. The San Diego Region was touted by Cal/EPA and the State Water Resources Control Board as a model Region for implementing a clearly defined enforcement process.

To be effective, enforcement must be implemented consistently, timely, and appropriately to direct dischargers toward compliance. The primary goal of enforcement is to correct violations as soon as possible and return a discharger to compliance with waste discharge requirements (WDRs) and orders of the Board, as well as State and Federal law and regulations. Enforcement is not a separate stand-alone program, but rather an integral part of the Regional Board's ongoing effort to protect water quality. At the same time, while every violation deserves an appropriate enforcement response, it is not feasible or prudent to pursue enforcement on each and every violation. The Regional Board must balance the impact of each potential enforcement action with the cost of that action. For these reasons it is extremely important to undertake enforcement actions against the most environmentally severe and worst non-compliance cases.

It is the goal of the State Board that the Regional Boards shall strive to be fair, firm and consistent in taking enforcement actions throughout the State, while recognizing the individual facts of each case. Therefore the State Board on February 19, 2002, adopted the Enforcement Policy as a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits. Toward that end, it is the intent of the State Board that the Regional Boards utilize the Enforcement Policy, while maintaining its full discretion authorized under the Water Code.

Since 2000, the Regional Board has assessed civil liability against 136 dischargers. The table below shows the regulatory programs associated with the enforcement actions, depicting an enforcement focus on violations of storm water permits (Construction, Industrial, and Municipal), violations of NPDES effluent limitations, and SSOs¹. In considering and imposing these liabilities, the Regional Board complied with

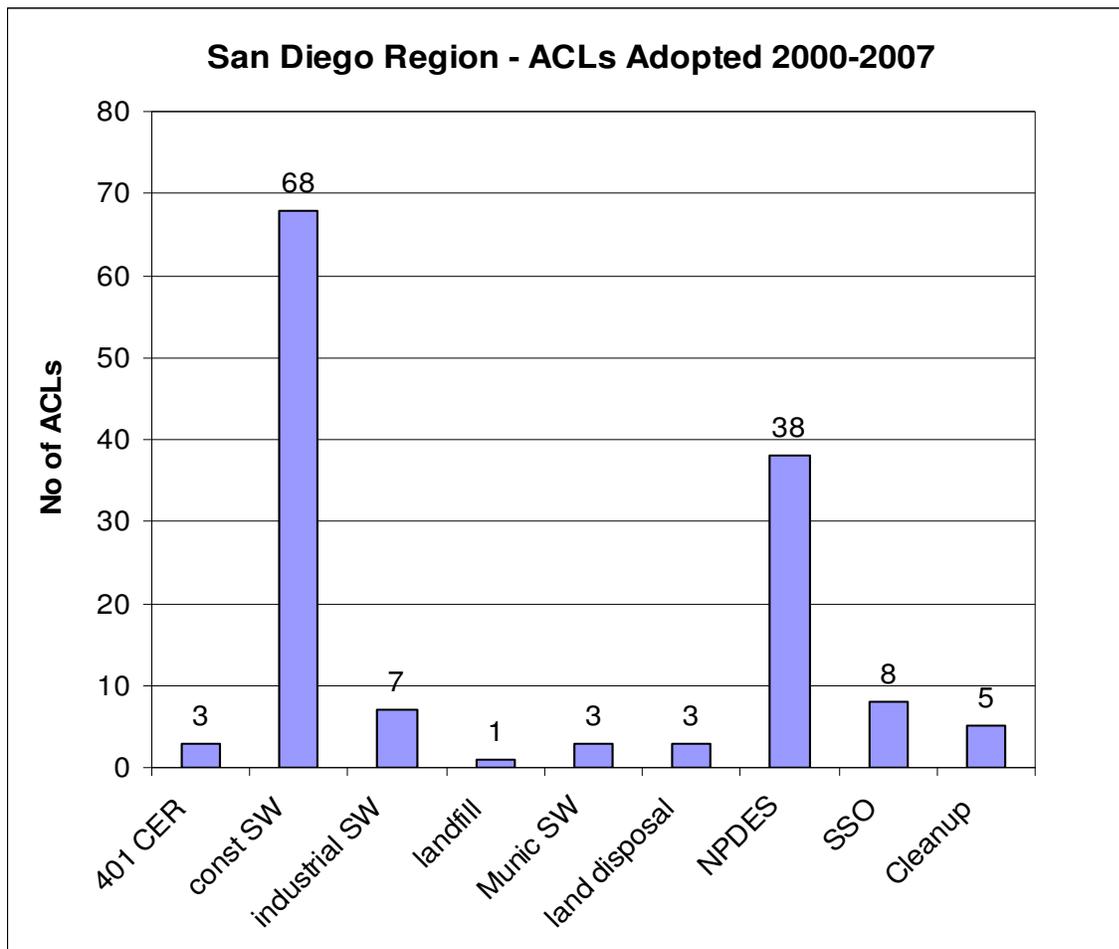
¹ A sanitary sewer overflow (SSO) is any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system. SSOs often contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oil, and grease. SSOs pollute surface and ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and

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the requirements of the Water Code, the applicable permit, and considered the State Board's Enforcement Policy.

Regional Board ACLs are designed to satisfy all of the requirements of the Water Code and fit within the framework of the Enforcement Policy. However, this Regional Board as well as the other Regional Boards do not rely on or utilize the Policy's formula in developing recommended liability amounts.

Regional Board staff maintain that because the formula approach relies on factors that are used as multipliers, the resulting liability amounts can be highly variable and subjective. The State Board recognizes the inherent problem implementing a strict formula approach and is planning to remove this formula approach in the next revision in the Enforcement Policy. The State Board has a long history of upholding Regional Boards broad discretion in developing and assessing liabilities within the constraints of the Water Code.



aesthetic enjoyment of surface waters. Typical consequences of SSOs include the closure of beaches and other recreational areas, inundated properties, and polluted rivers and streams.